

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government → The bill requires law enforcement and correctional agencies to verify that the contents of investigative reports relating to complaints against officer are true and accurate; the bill requires law enforcement and correctional agencies to investigate complaints alleging violations of officer rights, to remove investigators if a violation is found, to reinvestigate complaints, and to keep a log of all complaints received.

Safeguard Individual Liberty → The bill requires that an investigation of an officer be declared invalid if it is found that the officer's rights were violated during the investigation.

B. EFFECT OF PROPOSED CHANGES:

Verifying Investigative Reports

Section 112.533, F.S., currently requires law enforcement and correctional agencies to establish procedures for the receipt, investigation, and determination of complaints against law enforcement¹ and correctional officers². These procedures vary from agency to agency. However, in most instances when a complaint against an officer is filed, agencies investigate the complaint and file some form of an investigative report that summarizes the investigation (i.e. the date the complaint was filed, the allegations made in the complaint, witness statements, whether the allegation(s) were sustained or not sustained, the final disposition of the investigation, etc...).

Currently, Florida law provides criminal penalties for making false investigative reports.³ However, there is no law specifically requiring that the person preparing an investigative report verify pursuant to s. 92.525, F.S., that the contents of the report are true and accurate based upon the preparer's information and belief.⁴

This bill requires the officer who investigates a complaint and prepares the investigative report to, at the time the report is issued, verify pursuant to s. 92.525, F.S., that the contents of the report are true and accurate based upon the officer's information and belief.

Procedures for Investigating Complaints Made Against Investigating Officers

¹ The term "law enforcement officer" is defined as follows: "any person, other than a chief of police, who is employed full time by any municipality or the state or any political subdivision thereof and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, traffic, or highway laws of this state; and includes any person who is appointed by the sheriff as a deputy sheriff pursuant to s. 30.07." s. 112.531(1), F.S.

² The term "correctional officer" is defined as follows: "any person, other than a warden, who is appointed or employed full time by the state or any political subdivision thereof whose primary responsibility is the supervision, protection, care, custody, or control of inmates within a correctional institution; and includes correctional probation officers, as defined in s. 943.10(3). However, the term "correctional officer" does not include any secretarial, clerical, or professionally trained personnel." s. 112.531(2), F.S.

³ See s. 837.06, F.S., (whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his/her official duties is guilty of a second degree misdemeanor); s. 838.022, F.S., (It is unlawful for a public servant, with corrupt intent to obtain a benefit for any person or to cause harm to another, to falsify, or cause another person to falsify, any official record or official document); s. 944.33, F.S., (If any prison inspector knowingly makes a false report of his/ her findings, he/she shall be guilty of a third degree felony).

⁴ Section 92.525, F.S., provides two methods of document verification (by oath or affirmation or by the signing of a written declaration) and provides that it is a third degree felony to knowingly make a false declaration.

As noted above, law enforcement and correctional agencies are required by law to establish procedures for the receipt, investigation, and determination of complaints against law enforcement and correctional officers. Although each agency may have different procedures for investigating complaints against officers, *all* officers, regardless of which agency they work for, have certain statutory rights and privileges while under investigation.

Currently, Part VI of Chapter 112, commonly known as the "Law Enforcement Officers' Bill of Rights," grants law enforcement officers and correctional officers specific rights when the officer is under investigation and subject to interrogation by members of his or her agency for any reason which could lead to disciplinary action, demotion or dismissal. Pertinent to the proposed legislation is s. 112.532(1), F.S., which places conditions on certain aspects of an interrogation of an accused officer relating to time, place, and method of interrogation. Also related to the proposed legislation is s. 112.533(2)(a), F.S., which provides that complaints filed against officers and all information obtained pursuant to an investigation of the complaint shall be confidential and exempt from the provisions of s. 119.07(1), F.S. until the investigation ceases to be active, or until the agency head provide written notification to the officer that the agency has either concluded the investigation with a finding not to proceed with disciplinary action or to file charges; or concluded the investigation with a finding to proceed with disciplinary action or to file charges.

Currently, if an agency fails to comply with the provisions of the Law Enforcement Officers' Bill of Rights, an officer who is personally injured by such failure to comply may apply directly to the circuit court of the county where the agency is headquartered for an injunction to restrain and enjoin the violation and to compel performance of the agency's duties.⁵ Such officer may also file a civil suit for damages.⁶

Although Florida law currently provides remedies for officers whose rights have been violated, it does not specify the exact procedures that must be taken when an officer files a complaint alleging that his/her rights have been violated (i.e. current law does not specify the types of complaints that must be investigated, how such complaints should be investigated, whether reports must be generated, the disciplinary actions to be taken if the complaint is sustained, etc...). As noted above, such procedures generally vary from agency to agency,

This bill provides that if a law enforcement or correctional agency receives a complaint alleging a violation of s. 112.532(1) or s. 112.533(1)(b)⁷, F.S., the agency must investigate the complaint and issue a written report addressing and resolving the allegations of the complaint. If the report finds that there has been a violation, the agency must remove the investigating officer who is the subject of the complaint from internal investigative responsibilities and take other appropriate disciplinary actions. The agency must place the investigative report and supporting documents into the removed investigator's personnel file, invalidate the original investigation, and reinvestigate the original complaint. The bill further provides that agencies maintain a log documenting the receipt of complaints alleging a violation of an officer's rights. The log must include the date the complaint was received, the date the written report was completed, the disposition of the complaint, and the action taken against the investigating officer.

Finally, the bill provides that the provisions of s. 838.022, F.S., apply.⁸

C. SECTION DIRECTORY:

Section 1. Amends s. 112.533, F.S., requiring verification of the contents of certain investigative reports.

⁵ s. 112.534, F.S.

⁶ s. 112.532(3), F.S.

⁷ The bill mistakenly references s. 112.533(1)(b), F.S. The correct reference is to s. 112.533(2)(a), F.S.

⁸ Section 838.011, F.S., provides penalties for falsifying, concealing, and destroying official documents and records.

Section 2. Amends s. 112.534, F.S., providing for investigations of complaints alleging specified procedural violations; requiring a log of specified complaints.

Section 3. This act takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

If an agency finds that an officer's rights have been violated, the bill requires the agency to remove the investigating officer from investigative responsibilities, declare the original investigation invalid, and reinvestigate the original complaint. This may have a fiscal impact on both state and local law enforcement and correctional agencies in the follow ways:

- investigative personnel shortages
- time/resources wasted by invalidating the original investigation of a complaint
- additional time/resources expended to reinvestigating a complaint

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section one of the bill provides the following, "The officer assigned the responsibility of investigating the complaint and preparing the investigative report under this section shall, at the time the report is issued, verify pursuant to s. 92.525, F.S., that the contents of the report are true and accurate based upon the officer's information and belief." This language assumes that an *officer* will be assigned the responsibility of investigating a complaint and preparing a report. However, there may be times when someone other than an officer is assigned the responsibility of investigating a complaint (e.g. management personnel may be assigned). Additionally, the above language assumes that an investigative report will be completed. However, nothing in s. 112.533, F.S., *requires* that an agency complete an "investigative report," only that agencies establish procedures for investigating officer complaints. The above concerns could be addressed by stating the following:

"If the person assigned the responsibility of investigating the complaint prepares an investigative report, the person shall, at the time the report is issued, verify pursuant to s. 92.525, F.S., that the contents of the report are true and accurate based upon the person's information and belief."

In 2005, the Weaver Act was enacted, which requires that an internal investigation of a law enforcement or correctional officer be completed within 180 days after an agency receives notice of the allegation (with specific exceptions).⁹ The bill provides that if a violation is found, the original investigation is invalid and the complaint must be reinvestigated. If an original investigation is deemed invalid, an agency may not be able to complete the reinvestigation within 180 days.

The Department of Corrections' analysis expresses concerns which are summarized as follows:

- Section two of the bill states that if a complaint is filed alleging a violation of an officer's rights, the investigating officer who is the subject of the complaint must be "removed from internal investigative responsibilities." The bill does not specify whether the removal is temporary or permanent.
- The bill does not allow the employing agency to weigh the severity of the violation prior to removing the subject investigator from his/her duties. For example, an officer who failed to note his/her rank during an interrogation (a violation of s. 112.532(1), F.S.) would be subject to the same disciplinary action (removal from internal investigations) of an officer who intentionally falsified an investigative report.
- The bill usurps the employing agency's authority to administer discipline.
- The bill requires that an internal investigation be declared invalid if it is determined that a violation has occurred and that the original complaint be reinvestigated. This language does not consider the nature of the violation nor whether the violation prejudiced the outcome of the original investigation.
- If a violation is found, the bill requires that the investigative report and all supporting records be placed in the removed investigator's personnel file. It is unclear whether the *initial* investigative report/documents (that was declared invalid) are to be placed in the file or whether the investigative report concerning the violations are to be put in the file. Additionally, because some investigations have extensive exhibits (e.g. boxes, charts, etc...), it would be difficult to place these materials in an individual's personnel file.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

⁹ s. 112.532(6), F.S.